

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 4738, 4767 & 4837 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

GAYPESI VESMAWALA

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioners

MR BY MANKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/07/98

COMMON ORAL JUDGEMENT

Rule. In the facts and circumstances of the cases, the petitions are taken up for final disposal today.

2. Gaypesi Vesmawala, Shehra Pesi Karkaria and Perin Hosang Hansotia, three sisters who are petitioners in the present petitions, had filed their forms under the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act"). The Competent Authority declared that Perin Hosang Hansotia was holding excess

vacant land to the tune of 484 sq.mtrs. but the other two sisters did not hold any excess vacant land. All the three sisters filed Appeal Nos. 17, 18 and 19 of 1997 before the Urban Land Tribunal. The Tribunal dismissed the appeals of Gaypesi Vesmawala and Shehra Pesi Karkaria on the ground that in the order dated 30.6.1994/1.7.1994, the Competent Authority had held that the aforesaid two sisters were holding lands within the ceiling limit as each of them was holding 1493.25 sq.mtrs., that is within the permissible limit of 1500 sq.mtrs. and, therefore, their forms were required to be filed. The Tribunal, therefore, held that noting further was required to be done in the appeals of the said two sisters. As far as appeal of Perin Hosang Hansotia is concerned, the Tribunal dismissed the said appeal.

3. While issuing notice in Special Civil Application Nos. 4738 and 4767 of 1998, this Court passed a speaking order on 22.6.1998 pointing out the grievance of the petitioners that although each of the three sisters is having 1/6th share in Limbayat land admeasuring 2900 sq.mtrs., the Competent Authority in his final order at Annexure "H" has only referred to the 1/6th share (484 sq.mtrs.) in the holding of Perin Hosang Hansotia, but has not referred to the holding of the other two sisters in the said land, with the result that the title of the said two petitioners i.e. the petitioners of Special Civil Application Nos. 4738 and 4767 of 1998 has remained under a cloud and, therefore, the matter is required to be remanded to the Competent Authority for appropriate orders in that behalf.

4. At the hearing of the petitions, Mrs. KA Mehta, learned counsel for the petitioners has also substantiated her aforesaid grievance on the basis of the contents of para 6 of the written submissions which were made on behalf of the three sisters before the Tribunal on 5.1.1998 which are produced at Annexure "I" colly.

5. Mr Mankad, learned AGP who appears in response to the notice issued by this Court concedes that the Competent Authority as well as the Tribunal did not consider the share of Gaypesi Vesmawala and Shehra Pesi Karkaria in the aforesaid Limbayat land admeasuring 2900 sq.mtrs. Since the third sister Perin Hosang Hansotia, (petitioner of Special Civil Application No. 4738 of 1998) is also one of the co-owners and since the cases of all the three sisters were heard together earlier and the contentions raised on behalf of all the three petitioners are identical, it would be in the fitness of things to set aside the orders passed by the Competent Authority

and the Urban Land Tribunal in all the three cases and to remand all the three cases to the Competent Authority for deciding the three cases in accordance with law. The learned counsel for the petitioners states that the petitioners shall cooperate for expeditious disposal of the three cases.

6. The petitions are allowed. The orders dated 30..6.1994/1.7.1994 of the Competent Authority and the orders dt. 27.1.1998 of the Tribunal passed in Appeal Nos. 17, 18 and 19 of 1998 are accordingly quashed and set aside and the matters are remanded to the Competent Authority for deciding the three cases in accordance with law after giving the petitioners an opportunity of being heard.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

July 22, 1998 (M.S. Shah, J.)